IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 336 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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LK PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR IS SUPEHIA for Petitioner(s) : 1,
MR VIPUL MISTRY, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.
MR SP HASURKAR for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/04/2007

ORAL JUDGMENT

1. By way of this petition, under Article 226 of the Constitution of India, the petitioner has

prayed for an appropriate direction for striking down the sentence “and who possesses the academic qualification specified in sub-rule (b) of Rule 3” appearing in sub – rule (a) of Rule 2 of the Senior Food Inspector (Food and Drugs Control Administration) Recruitment Rules, 1987. It is also further prayed to direct respondent No.1 to consider the case of the petitioner for promotion to the post of Senior Food Inspector and if found suitable to promote him with effect from 02.12.1997 with all consequential benefits.

2. It appears from the pleadings and submission made on behalf of the learned Advocate appearing on behalf of the petitioner that when the petitioner was appointed, additional qualification for promotion to the post of Senior Food Inspector was not provided and at the time when the case of the petitioner for promotion to the aforesaid post was under consideration, in the meantime Rules came to be amended and it was provided that for the purpose of promotion to the aforesaid post there shall be additional qualification, which according to him is not permissible. It is the contention on behalf of

the petitioner that whatever Rules for promotion were in force at the time of his appointment should be considered even at the time of promotion.

3. Mr. Vipul Mistry, learned Assistant Government Pleader has relied upon two decisions of the Hon'ble Supreme Court, one in the case of ***State of Madhya Pradesh and others v/s. Chhaya and others*** reported in ***AIR 1999 SC 2014*** and another in the case of ***P.U.Joshi and others v/s. Accountant General, Ahmedabad and others*** reported in ***AIR 2003 SC 2156,*** by which it is held that Rules are to be considered which is applicable at the time of promotion and not at initial appointment. Considering aforesaid two decisions of the Hon'ble Supreme Court, the present case is squarely covered by the aforesaid two decisions.

4. Under the circumstances the prayer of the petitioner to strike down the sentence “and who possesses the academic qualification specified in sub-rule (b) of Rule 3” appearing in sub – rule (a) of Rule 2 of the Senior Food Inspector (Food and Drugs Control Administration) Recruitment Rules,

1987, cannot be set aside and/or no direction can be issued to respondent No.1 to promote the petitioner considering the Rules prevailing at the initial appointment. Hence, this Special Civil Application is required to be dismissed and is accordingly dismissed. Rule discharged. No Costs.

[M.R.Shah, J.]

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